

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

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CLAIMANTS: David R. Lautner; Paul A. Lautner

CASE 40A-0273-R-2022
40A 105568-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claim 40A 105568-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). This claim received issue remarks. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. This claim did not receive any objections or notices of intent to appear.

The Court consolidated this claim into Water Court Case 40A-0273-R-2022 on January 21, 2022. The Court requested Claimant file information resolving the issue remarks. The Court did not receive any filings by the deadline. The Court issued an order on August 1, 2022 setting a second filing deadline for the same purpose. The Court did not receive any filings by that deadline.

FINDINGS OF FACT

1. Claim 40A 105568-00 appeared with the following issue remarks:

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE PLACE OF USE APPEARS TO BE INCORRECT AND CANNOT BE CLARIFIED WITH AVAILABLE DATA. THE PLACE OF USE APPEARS TO BE LOCATED IN THE SENWSW SEC 5 AS SUGGESTED BY THE MAP SUBMITTED WITH OWNERSHIP UPDATE MATERIALS RECEIVED 08/15/2016.

2. As referenced in the issue remark on this claim, a map included with ownership update materials submitted August 15, 2016 indicates the place of use as currently described is inaccurate. The DNRC modified the claimed point of diversion based on the map. The map depicts the well near a house. On the original Statement of Claim filed September 24, 1981, the point of diversion and place of use match. Accordingly, it seems the point of diversion and place of use should still match.

3. The modification proposed in the issue remark would result in the point of diversion and place of use matching for this 1.00 acre domestic water right claim.

4. The place of use of Claim 40A 105568-00 should be described as SENWSW of Section 5, T6N, R20E, Golden Valley County.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A

preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. If a claimant fails to appear at a scheduled Court proceeding or fails to comply with a Court order during the Court’s review of issue remarks, the Court may modify elements of a claim to conform with information in the claim file or otherwise obtained by the Court. Section 85-2-248(9), MCA.

CONCLUSIONS OF LAW

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

2. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove each issue remark from the above-captioned claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state’s centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

David R. Lautner
Paul A. Lautner
103 S 1st St
Ryegate, MT 59074

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A**

Water Right Number: 40A 105568-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DAVID R LAUTNER
103 S 1ST ST
RYEGATE, MT 59074 9701

PAUL A LAUTNER
103 S 1ST ST
RYEGATE, MT 59074 9701

Priority Date: DECEMBER 31, 1939

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 3.00 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWSW	5	6N	20E	GOLDEN VALLEY

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00		SENWSW	5	6N	20E	GOLDEN VALLEY

Total: 1.00